Supreme Court, U.S.
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No. 97-1397

In The Supreme Court of the United States

OCTOBER TERM 1997

KAREN DERZACK AND MICHAEL DERZACK,

Petitioners,

v.

ALLEGHENY COUNTY CHILDREN AND YOUTH SERVICES,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

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RESTATEMENT OF QUESTION PRESENTED

Petitioner foster parents' due process rights were not violated upon trial court's order to withdraw Respondent agency's Adoption filings and to dismiss the Report of Intention to Adopt filed by Petitioners for two foster children.

TABLE OF CONTENTS

Page(s)

RESTATEMENT OF QUESTION PRESENTED . . . . . *i*

TABLE OF AUTHORITIES . . . . . *iii*

STATEMENT OF THE CASE 1

REASONS FOR DENYING THE WRIT 2

A. The issue is now moot. 2

B. The result in the Derzacks' case is not in conflict with any decision of this Court nor any other court. 3

C. There are no important issues at stake in this case. 4

CONCLUSION 6

TABLE OF AUTHORITIES

Cases	Page(s)
Martin v Theis, 446 U.S. 1320 (1980)	4
Santosky v. Kramer, 455 U.S. 745 (1982)	3
Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977)	4

Statutes	
U.S. CONST. AMEND. XIV	3
23 Pa. C. S. A. Section 2711(a)(5)	5

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This Honorable Court should deny the Petition for Writ of Certiorari as the issue raised by Petitioners (the Derzacks) is now moot. This Honorable Court denied the Derzacks' Petition on March 9, 1998 at No. 97-1105 which alleged that their due process rights were violated regarding their foster children's removal. Thus, any issue concerning the trial courts order allowing withdrawal and dismissal of Allegheny County Children and Youth Services' (ACCYS) adoption filings in this case is now moot. ACCYS incorporates by reference its Brief in Opposition filed at No. 97-1105 in this matter.

Pursuant to the trial court's earlier removal of these children from the Derzacks on January 17, 1996, ACCYS presented on August 27, 1996 a Motion to Withdraw its Adoption Petition and Report of Intermediary, and to dismiss the Report of Intention to Adopt filed by the Derzacks. The trial court granted ACCYS' motion on that date.

The Derzacks then filed timely exceptions to the trial court's order which were denied by the court *en banc* after submission of briefs and oral argument on October 7, 1996.

The Derzacks filed an appeal to the Superior Court of Pennsylvania which was quashed upon motion of ACCYS on April 23, 1997.

The Derzacks then petitioned for allowance of appeal to the Supreme Court of Pennsylvania which was denied on November 25, 1997.

The Derzacks then filed a Petition for Writ of Certiorari to this Court.

REASONS FOR DENYING THE PETITION

A. This issue is now moot.

On March 9, 1998 at No. 97-1105, this Honorable Court denied the Derzacks' Petition for Writ of Certiorari regarding their claim that their due process rights were violated when their former foster children were removed from their care. The lower court found that the Derzacks had flagrantly violated several court orders designed to protect the children's best interests, and the Pennsylvania appellate courts upheld the lower court's order.

As this Court has declined to review any alleged due process violation pursuant to the children's removal from the Derzacks' home, this Court should also decline to review any alleged due process violation regarding the trial court's order disposing of the adoption filings in this case.

Once the trial court removed these children from the Derzack's home, they were no longer considered the adoptive resource for these children. As they were no longer the adoptive resource, the trial court properly ordered that the adoption filings be withdrawn and dismissed.

There is no legal reason for this Court to hear this case as it allowed to stand the order removing the children from the Derzacks. The Derzacks are not and will never be the adoptive parents for these children. Thus, it is now a moot issue concerning the legality of whether the court properly ordered the adoption filings to be withdrawn and dismissed.

B. The result in the Derzacks' case is not in conflict with any decision of this Court nor any other court.

The Derzacks argue that they have a fundamental liberty interest in the care and custody of two foster children pursuant to the Fourteenth Amendment to the United States Constitution which states in part "...nor shall any State deprive any person of life, liberty or property, without due process of law." They cite no authority for this argument, but suggest that their interests are akin to those of a natural parent. They attempt to buttress their fallacious argument by citing Santosky v. Kramer, 455 U.S. 745 (1982), however, the due process protections outlined in Santosky apply to natural parents, not foster parents nor adoptive foster parents. The Court also stated that the nature of due process was a balancing of the private interests of the natural parent, risk of error in the deprivation by the state and the countervailing government interest in the best interests of the child. *Id*, at 754. The Derzacks cite no authority for the balancing of those interests here.

Though Santosky clearly applies to the "liberty" interest that biological parents have in their children, do foster parents have any asserted interests within the "liberty" protected by the Fourteenth Amendment? This Court spoke

narrowly on this issue is Smith v. Organization of Foster Families for Equality and Reform, 431 U.S. 816 (1977). In Smith, this Court declined to expand to foster parents a constitutionally protected liberty interest stating that "... there are also important distinctions between the foster family and the natural family. ... [T]he State...seeks to interfere, not with a relationship having its origins entirely apart from the power of the State, but rather with a foster family which has its source in state law and contractual arrangements." *Id,* at 845.

In addition, this Court denied an application for writ of mandate by a couple seeking reinstatement as prospective adoptive parents after the state had removed the child without notice in the child's best interests. Martin v. Thies, 446 U.S. 1320 (1980). Clearly, based upon the above authorities, the Derzacks have no fundamental liberty interest in these children.

C. There are no important issues at stake in this case.

The Derzacks argue that they are somehow due a hearing on the adoption petition filed by ACCYS on behalf of ACCYS and as a courtesy to the Derzacks when they were considered potential adoptive parents for these children. The Derzacks have no constitutional right to be heard on ACCYS' pleadings. Moreover, they were given notice of the presentation of the motion to dismiss these filings and they were represented by counsel at the hearing.

Most importantly, once the court *en banc* removed the children from the Derzacks' care after extensive hearings, the court no longer would permit them to adopt these children.

As the trial court stated, "... the Derzacks have

> no contact with the children, do not have physical custody of them and are not responsible for any decisions made on their behalf. They, therefore, have no parental relationship with them. Secondly, [23 Pa.C.S.A. Section 2711(a)(5) of the Adoption Act of 1980 *as amended*] requires that the child's guardian or the persons having custody of the child consent to the adoption. It is clear that the Derzacks have neither the consent of the persons with physical custody of the children [the children's new adoptive family] nor from the agency which functions as the legal guardian. Accordingly they cannot proceed with the Adoption Petition as filed by [ACCYS] on their behalf." (19A)[1]

The Derzacks cite absolutely no authority for any of their meritless arguments. They have had extensive hearings on the issue of the children's removal, and the best that can be said of their recent repetitive filing with this Court is that it is the desperate act of desperate people.

Their due process claim has no basis in law or fact and fails to present a compelling reason for review by the Court, and thus should be denied.

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[1]The designation "A" preceded by page numbers indicates location in the Appendix to the Petition for Writ of Certiorari.

CONCLUSION

This case is now moot and does not merit further review by this Court. For the foregoing reasons, the Derzacks' Petition should be denied.

Respectfully submitted,

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